

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 GUN CLUB ROAD
WEST PALM BEACH, FLORIDA

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Order No. 2010-051-DAO-WS

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

IN THE MATTER OF:

Rescission of Order No. 2008-
166-DAO-WS, Imposing Modified
Phase II Severe Water Shortage
Restrictions for Specified Uses
Withdrawing Water from Surface
Waters and Groundwater within
those Areas of the South Florida
Water Management District

**ORDER RESCINDING MODIFIED PHASE II WATER SHORTAGE
RESTRICTIONS**

The Governing Board of the South Florida Water Management District (hereinafter "District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Section 373.246, Florida Statutes ("Fla. Stat."), and Chapter 40E-21, Florida Administrative Code ("Fla. Admin. Code"), based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On April 10, 2008, the Governing Board issued Water Shortage Order No. 2008-166-DAO-WS, rescinding modified phase III water use restrictions and imposing modified phase II water use restrictions on agricultural, nursery, golf course, water utility, and athletic/recreation water use classes throughout the District. A copy of the order is available from the District Clerk.

2. On September 22, 2008, the Governing Board issued Water Shortage Order No. 2008-420-DAO-WS, rescinding modified phase II water use restrictions on

agricultural, nursery, golf course, water utility, and athletic/recreation water use classes throughout the District. However, modified phase II restrictions for the landscape irrigation water use restrictions remained in effect. A copy of the order is available from the District Clerk.

3. The area which is the subject of this Order is the area previously subject to Water Shortage Order No. 2008-166-DAO-WS. A map of the area affected by this Order is attached hereto as Exhibit "A."

4. The use classes subject to this Order are the landscape irrigation water use classes as identified in Rule 40E-21.651, Fla. Admin. Code.

5. District staff has continued to monitor the conditions of the water resources and the needs of the water users as required pursuant to Rule 40E-21.221, Fla. Admin. Code.

6. Since the effective date of Order No. 2008-166-DAO-WS, surface and groundwater levels in the Water Conservation Areas ("WCAs") and Central and Southern Florida Flood Control Project Canals have significantly improved.

7. From April 10, 2008 to March 1, 2010, the District received an average of 95.53 inches in rainfall. This is ninety-five percent of the 30-year average rainfall.

8. The water level of Lake Okeechobee is within the Low Operational Band of the Lake Okeechobee Regulation Schedule with an elevation of 13.55 feet NGVD on March 9, 2010.

9. As of March 9, 2010, the water levels for Water Conservation Areas ("WCAs") 1, 2A, and 3 were 16.53, 10.68, and 9.79 feet NGVD, respectively. These levels are above the regulation schedule identified in the U.S. Army Corps of Engineers

("Corps") Water Control Manual for the Water Conservation Areas and Everglades National Park. As a result, the Lower East Coast Region surface water recharge needs are being met by the WCAs and direct rainfall rather than deliveries from Lake Okeechobee.

10. The U.S. Geological Survey ("USGS") maintains a network of monitoring wells throughout the District. Most of the monitoring wells within the District currently reflect water levels within the highest tenth to thirtieth percentile of their past elevations for respective periods of record.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

11. Section 373.246, Fla. Stat., authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water so as to protect the water resources of the District.

12. The District's Water Shortage Plan is set forth in Chapter 40E-21, Fla. Admin. Code.

13. Rule 40E-21.291(4), Fla. Admin. Code, authorizes the Governing Board to modify or rescind water shortage orders.

14. Rules 40E-21.271 and 40E-21.371, Fla. Admin. Code, recognize the restrictions contained in Part V of Chapter 40E-21, Fla. Admin. Code, are general water use restrictions. Rules 40E-21.271 and 40E-21.371, Fla. Admin. Code, also authorize the Governing Board to order any combination of restrictions in lieu of or in addition to those in Part V, Chapter 40E-21, Fla. Admin. Code.

15. Rule 40E-21.401, Fla. Admin. Code, and permit conditions, authorize the District to obtain data concerning monitoring of water usage.

16. The District has monitored the condition of the water resources and the needs of the users as required by Rule 40E-21.221, Fla. Admin. Code.

17. Considering the above findings of fact, it is necessary to enter this Order rescinding the specific restrictions on the affected users.

ORDER

Based upon the above Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board orders that:

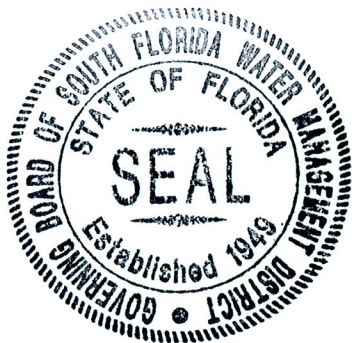
18. Water Shortage Order No. 2008-166-DAO-WS is hereby rescinded.

19. Variances granted from or extended by Water Shortage Order No. 2008-166-DAO-WS shall expire upon the effective date of this Order.

20. This Order rescinding the Modified Phase II Severe Water Shortage Restrictions shall become effective March 19, 2010.

21. A Notice of Rights is attached as Exhibit "B."

DONE AND SO ORDERED at a public meeting held at the Brighton Seminole Indian Reservation, 800 E. Harney Pond Road, Okeechobee, Florida 34974, on this 11 day of March 2010.



SOUTH FLORIDA WATER

MANAGEMENT DISTRICT

By its Governing Board

By: 

SHERYL G. WOOD
General Counsel

ATTEST:

By: 

District Clerk/Assistant Secretary

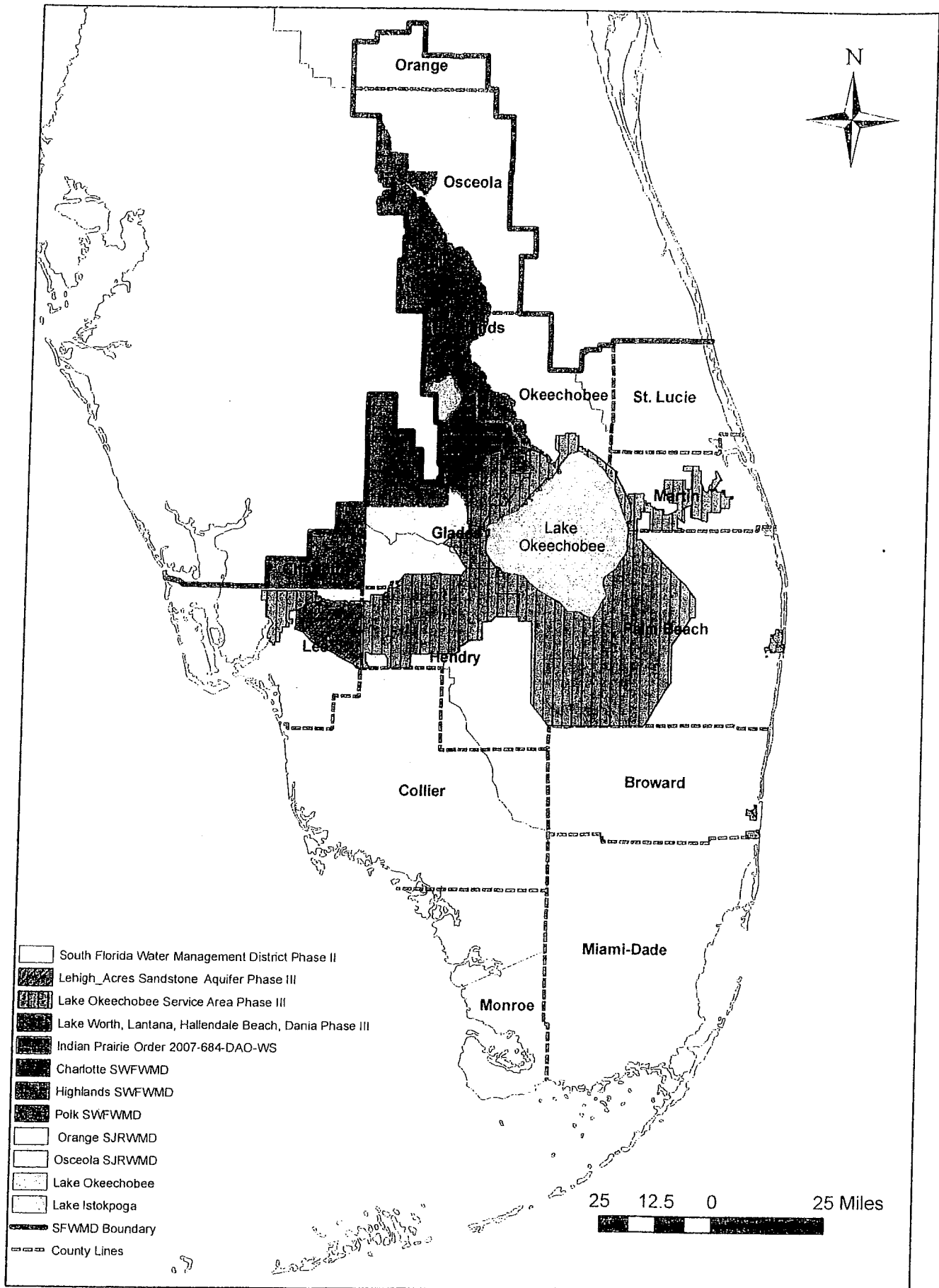
Dated: March 15, 2010

Legal Form Approved: 

By:

Jennifer Bokankowitz, Esq.

RESCISSION OF WS ORDER NO. 2008-166



NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

Filing Instructions

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

Initiation of an Administrative Hearing

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

Mediation

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.